



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO:

JAN 06 2012

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Issa:

Thank you for your letter of December 12, 2011, regarding the Occupy DC demonstration in McPherson Square. Secretary Salazar has asked that I respond on his behalf.

The national parks of Washington, D.C. have a proud tradition as places where Americans come for reflection, commemoration, recreation, and to make their voices heard through public assembly and political demonstration. The National Park Service (NPS) and its United States Park Police (USPP) are firmly committed to protecting the resources that have been entrusted to our care, including by ensuring public safety and enforcing our nation's laws. They also have a unique role in respecting Americans' First Amendment rights.

Americans expect to be able to exercise their right of freedom-of-speech in national parks in the nation's capital. Courts too have recognized that "the right to use public parks for expression of ideas is of special importance in the District of Columbia" where "the general concepts of First Amendment freedoms are given added impetus as to speech and peaceful demonstration in Washington, D.C., by the clause of the Constitution which assures citizens of their right to assemble peaceably at the seat of government and present grievances." *Quaker Action v. Morton* (D.C. Cir. 1975). NPS regulations for access to and use of park lands by the public have been the subject of much litigation over the years and our present regulations have been carefully crafted to conform to First Amendment jurisprudence as well as NPS recognition of the importance of First Amendment activities. The NPS management of McPherson Square during its use by demonstrators associated with the Occupy DC movement has been informed and guided by these parameters.

As stated above, both the courts and NPS regulations are protective of the exercise of First Amendment speech within national parks. Demonstration permits for most areas may be secured for up to four months and include a presumption that permits may be extended. 36 C.F.R. 7.96(g)(4)(vi). In addition, although NPS regulations allow for camping only within

designated areas of the National Capital Region (McPherson Square is not a designated area), 36 C.F.R. § 7.96(i)(1), temporary structures, including tents, are permissible as part of a demonstration to further the protestors' message or meet logistical needs. 36 C.F.R. § 7.96(g)(5)(vi). Since a court struck down NPS regulations restricting the duration of demonstrations, *Quaker Action v. Morton* (D.C. Cir. 1975), constant, round-the-clock demonstration vigils have been regular occurrences in some national park areas in the National Capital Region.

Just such a round-the-clock demonstration began in McPherson Square on September 17, 2011. The demonstrators did not apply for a permit prior to the start of their demonstration. NPS regulations (promulgated in 1983), however, do not require a permit for the use of McPherson Square if the activity involves less than 500 people, 36 C.F.R. § 7.96(g)(2)(ii)(B). Although NPS officials did not have contact with the McPherson demonstrators prior to the initiation of their protest in McPherson Square, immediately after the protest began NPS personnel concluded, based on communications with the demonstrators and observation of their activities, that the expressive activities in the Square were protected by the First Amendment.

In order to best meet public safety goals while respecting this First Amendment activity, since September 17, 2011, the NPS has been working closely with the District of Columbia, including the Metropolitan Police Department and the D.C. Department of Health, to ensure that demonstrations in McPherson Square are conducted in safe and lawful manner. To accomplish this goal, the NPS has exercised its discretion to take a proactive, reasoned and measured approach to enforcement.

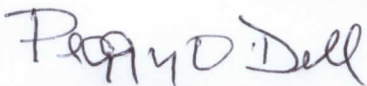
In particular, NPS personnel have at all times maintained a continuous law enforcement presence and constant patrols at McPherson Square in order to protect the health and safety of park visitors and demonstrators, and have taken necessary action to protect public health and safety. NPS personnel also have maintained an ongoing dialogue with the demonstrators in McPherson Square about the rules, rights, and responsibilities involving a demonstration of this nature, including through the flyers noted in your letter.

As of January 3, 2012, this policing effort by USPP has resulted in the arrest of approximately sixty-one individuals for a variety of criminal offenses that include assault, threats and disorderly conduct. These arrests are a result of proactive law enforcement actions as well as investigations of crimes reported by visitors or demonstrators. Notable enforcement actions include the removal in December of a large, unsafe structure from McPherson Square (which resulted in thirty-seven arrests) and the removal this past week of two smaller structures, a stage and a tent partially built from wooden pallets. If the protest continues, NPS will continue to exercise its discretion and take a common sense approach as it works to respect First Amendment rights and enforce NPS rules as well as other laws.

The NPS also takes seriously its responsibility to protect the resources that have been entrusted to its care. First Amendment activities, however, often come with a measure of wear and tear on our national parks, not dissimilar to what results from frequent and high-volume use by visitors and tourists to our parks in the National Capital Region and around the country. It is a cost of providing Americans access to our nation's shared treasures and common spaces. We do want to take this opportunity to reassure you that of the \$400,000 grant made for improvements at McPherson Square, only \$8,000 was used to re-sod the park with new grass. The remainder was spent on hardscape improvements that have not, to our knowledge, been damaged over the course of the demonstration.

To further accommodate the Committee's interest in this issue, the NPS is prepared to brief the Committee at its convenience on operations at McPherson Square. We look forward to continued cooperation with the Committee.

Sincerely,

A handwritten signature in dark ink, appearing to read "Peggy O'Dell". The signature is fluid and cursive, with the first name "Peggy" and last name "O'Dell" clearly distinguishable.

Peggy O'Dell
Deputy Director, Operations